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IN THE

Supreme Court of the United States

OCTOBER TERM—1963

No. 970

In the Matter of

ANONYMOUS NO. 1, An Attorney,

Petitioner,

against

CO-ORDINATING COMMITTEE ON DISCIPLINE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

PETITIONER'S REPLY BRIEF

LEONARD FELDMAN, Esq.,
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PETITIONER'S REPLY BRIEF

A reading of the respondent's brief in opposition to the petition makes the following facts manifest and undisputed:

(1) The respondent is in possession of and refuses to disclose evidence which is material and necessary to the petitioner's defense.

(2) The evidence being withheld by respondent is material, relevant and pertinent to the charges levelled against the petitioner.

It is equally clear from the respondent's brief that the respondent reserves unto itself the right to select from the documentary evidence and testimony at its disposal only that limited portion which it intends to produce at the hearings, and to withhold and not disclose any other

evidence, regardless of whether such other evidence is material, relevant and pertinent, or whether such other evidence is helpful to the petitioner's defense or exculpative of the petitioner. The respondent justifies this policy of secrecy on the ground that attorneys who are respondents in a disciplinary proceeding are not entitled to the same rights and procedural remedies as even the meanest litigant.

Respondent advances the notion that an attorney under charges is not entitled to the usual, ordinary and normal procedural remedies available to all other litigants because he may suborn perjury, even though the same risk of subornation exists whenever litigation exists; a risk, incidentally, not peculiar to attorneys' disciplinary proceedings. It is submitted that respondent's notion, if allowed to prevail would result in a doctrine which is abhorrent to all reasonable concepts of equality under law and fair play.

The respondent's brief ignores entirely the fact that petitioner seeks discovery in two specific categories: (a) specific financial records of certain witnesses, which records are available; and (b) other documents, statements and testimony which also are exonerative of the petitioner and in the possession of respondent. It simply takes the categoric position that a disciplinary proceeding is some sort of a special proceeding and an attorney who is under charges has only limited procedural rights. It cannot be ignored that respondent admits that it initiated and conducted the investigation of the petitioner; limited the extent of the inquiry it conducted by refusing to hear witnesses on the petitioner's behalf; initiated the disciplinary charges against petitioner; is prosecuting the trial of those charges and, now seeks to withhold evidence in its possession which petitioner needs for his defense.

With regard to the issue of "finality", this Court stated in *NAACP v. Alabama*, 357 U. S. 449, 457-458, 78 S. Ct. 1163, 1169, as follows:

> "Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights."

In *Republic Natural Gas Co. v. Oklahoma*, 334 U. S. 62, 68, 68 S. Ct. 972, 976 this Court has held that it will review an interlocutory decree where the controversy has proceeded to a point where the losing party will be irreparably injured if review is unavailable.

In the case at bar, the petitioner has the right to rely upon those procedural remedies which the courts have held are available to him in a proceeding of this sort. There can be no question, either, that the petitioner will be irreparably injured if the tactic of the respondent is permitted to thwart his defense. There is an immediate issue of due process and it is clear and compelling. Review at this time will eliminate that issue and allow the proceeding to proceed to conclusion on the merits and in the certainty that tactical maneuvers have not tainted the result.

CONCLUSION

No valid reason has been advanced by the respondent for denying the petition for a writ.

Respectfully submitted,

LEONARD FELDMAN,
Attorney for Petitioner.